

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Advanced Environmental, Inc.
13579 Whittram Avenue
Fontana, CA 92335

EPA ID: CAT 080 025 711

Respondent.

Docket HWCA 20020046

CONSENT ORDER

Health and Safety Code
Section 25187

INTRODUCTION

The California Department of Toxic Substances Control (Department) and Advanced Environmental, Inc. (Respondent) enter into this Consent Order (Order) and agree as follows:

1.1. Site. Respondent generates, handles, treats, stores, and/or transfers of hazardous waste at the following site: 13579 Whittram Avenue, Fontana, California (Site).

1.2. Inspection. The Department inspected the Site on April 30, 2002, May 1, 2, 6, 10 and 14, 2002.

1.3. Permit/Interim Status. In March, 1991, the Department issued Respondent a grant of Interim Status (ISD) as a treatment and storage facility. Respondent was authorized to treat and store used oil/waste oil, mixed oil, oil/water separation sludge, oil contaminated with vehicle fuel and aqueous solution, which were oily waters with total organic less than 10%. On April 15, 1996, the ISD was modified to authorize

Respondent to accept waste antifreeze. On June 6, 1997, the ISD was modified to replace the Waste Water Treatment System.

On December 30, 2000, Respondent resubmitted its application for a Standardized Permit as a storage and transfer facility for California Only wastes. However, DTSC has not made a final decision regarding the Standardized Permit Application submitted by Respondent.

Therefore, the facility currently is operating under modified ISD issued by DTSC on June 6, 1997.

1.4. Jurisdiction. Health and Safety Code section 25187, authorizes the Department to order action necessary to correct violations and assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.5. Dispute. A dispute exists regarding the violations alleged below. The parties wish to avoid the expense of litigation and to ensure prompt compliance with the statutes and/or regulations cited herein.

1.6. Full Settlement. This Order shall constitute full settlement of the violations alleged below, but does not limit the Department from taking appropriate enforcement action concerning other violations.

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VIOLATIONS

2. The Department has determined that:

2.1. Respondent violated California Code of Regulations, title 22, section 66265.193, subdivision (b)(1), in that, on or about April 30, 2002, Respondent failed to operate the secondary containment to prevent any migration of wastes or accumulated liquid out of the system to the soil. Cracks and gaps were observed in the tanks' secondary containment areas.

2.2. Respondent violated California Code of Regulations, title 22, sections 66265.73, subdivision (b)(3), and 66279.91, subdivision (a), in that on or about April 30, 2002, Respondent failed to record in its operating log the results of waste analyses performed on retain samples from used oil received at the facility with total halogens exceeding 1,000 ppm.

2.3. Respondent violated Health and Safety Code section 25202, subdivision (a), in that, since on or about June 6, 1997, Respondent failed to follow its modified ISD requirements by certifying recycled oil from used oil in its receiving tanks without any treatment process identified in its modified ISD. Respondent is blending used/waste oil in its receiving tanks and certifying the content of receiving tanks as recycled oil. Respondent is only authorized to certify oil from its recycling process units.

2.4. Respondent violated California Code of Regulations, title 22, section 66265.15, subdivisions (b)(1) and (b)(3), in that on or about April 30, 2002, Respondent failed to develop, follow and record in its inspection log a written schedule for inspecting
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operating equipment such as pumps and sump pumps which had leaked. Respondent also failed to make notation in its inspection log regarding the cracks and gaps observed in its tanks' secondary containment areas.

SCHEDULE FOR COMPLIANCE

3. Respondent shall comply with the following:

3.1.1. Respondent has repaired all cracks or gaps in tanks secondary containment area that were noted in the inspection referenced at paragraph 1.2 above.

3.1.2. Respondent shall record in its operating log the date, time, person performing, test method, and results of all waste analyses upon which it relies to demonstrate compliance with the requirements of California Code of Regulations, title 22, section 66279.10, subdivision (a)(5).

3.1.3. Respondent shall cease all activity not authorized by its modified ISD dated June 6, 1997.

3.1.4. Respondent shall comply with requirements of California Code of Regulations, title 22, section 66265.15, subdivisions (b)(1) and (b)(3).

3.1.5. Respondent shall maintain this Order as part of its operating record for a period of not less than five years.

3.1.6. Notwithstanding, and in addition to, any other notification or reporting requirements to which Respondent is subject by virtue of statute, regulation, or otherwise, Respondent shall report any known violation or lapse in compliance of any element of this Schedule for Compliance. Such report shall cite the docket number of
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this order and shall be made to the person identified in paragraph 3.2 below not later than thirty days after the commencement of the violation or lapse in compliance.

3.2. Submittals. All submittals from Respondent pursuant to this Order shall be sent to:

Mr. Roberto Kou, Unit Chief
Statewide Compliance Division
Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, California 91201

3.3. Communications. All approvals and decisions of the Department made regarding submittals and notifications shall be communicated to Respondent in writing by the Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

3.4. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a modified document incorporating the recommended changes.

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3.5. Compliance with Applicable Laws. Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.6. Endangerment during Implementation. In the event that the Department determines that any circumstance or activity (whether or not pursued in compliance with this Order) creates an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation of this Order for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

3.7. Liability. Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Order. Notwithstanding compliance with the terms of this Order, Respondent may be required to take such further actions as are necessary to protect public health or welfare or the environment.

3.8. Site Access. Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any other agency having jurisdiction. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may have by operation of any law or otherwise. The Department and its authorized representatives may enter and move freely about all

property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

3.9. Sampling, Data, and Document Availability.

3.9.1. Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf, in any way pertaining to work undertaken pursuant to this Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order.

3.9.2. All such data, reports, and other documents prepared pursuant to this Order shall be preserved by Respondent for a minimum of three years after the conclusion of all activities under this Order.

3.9.3. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Nothing in this paragraph shall be construed or is intended to eliminate Respondent's obligation to comply with other record preservation requirements under applicable state or federal laws or regulations.

3.10. Government Liabilities. The Department shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent, or related parties specified in paragraph 4.2, in carrying out activities pursuant to this Order, nor shall the Department be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Order.

3.11. Incorporation of Plans and Reports. All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Order are incorporated in this Order upon approval by the Department.

3.12. Extension Requests. If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.13. Extension Approvals. If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

OTHER PROVISIONS

4.1. Penalties for Noncompliance. Failure to comply with the terms of this Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

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4.2. Parties Bound. This Order shall apply to and be binding upon Respondent and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Order.

4.3. Integration. This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except by a writing duly executed by the Department and specifically referencing this document by title and docket number, or as otherwise provided in this Consent Agreement.

4.4. Privileges. Nothing in this Consent Agreement shall be construed to require any party to waive any privilege, including without limitation, attorney-client and attorney work-product. However, the assertion of any privilege shall not relieve any party of its obligations under this Order.

PENALTY

5.1. Respondent shall pay the Department the total sum of \$19,500, which includes \$10,000 as reimbursement of the Department's costs incurred in connection with this matter.

5.2. Payment in the amount of \$19,500 is due within 30 days from the effective date of this Order.

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5.3. Respondent's check shall be made payable to Department of Toxic Substances Control, shall identify the Respondent and Docket Number, as shown in the caption of this case, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Mr. Roberto Kou, Unit Chief
Statewide Compliance Division
Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, California 91201

Mr. James J. Grace
Staff Counsel
Office of Legal Counsel
Department of Toxic Substances Control
1001 I Street, 23rd floor
P. O. Box 806
Sacramento, California 95812-0806

5.4. If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

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RIGHT TO A HEARING

6. Respondent waives any right to a hearing in this matter.

EFFECTIVE DATE

7. The effective date of this Order is April 30, 2005.

Dated: April 8, 2005

Original signed by Bruce DeMenno
Bruce DeMenno, President
Advanced Environmental, Inc.
Respondent

Dated: April 30, 2005

Original signed by Robert Kou
Roberto Kou, Unit Chief
Department of Toxic Substances Control